

CHAPTER 9

APPLICABLE ENVIRONMENTAL LAWS, REGULATIONS, PERMITS, AND DOE ORDERS

Permits and approvals would be needed before the proposed project could be constructed. Permits would regulate many aspects of facility construction and operations, including the quality of construction, fugitive dust control requirements, treatment and storage of hazardous waste, and discharges of effluents to the environment. These permits would be obtained as required from appropriate Federal, state, and local agencies. Table 9–1 contains a summary of the primary approvals that would be required to implement the proposed action or the alternatives.

The major Federal laws, regulations, Executive Orders (EOs), and other compliance actions that potentially apply to the proposed project, depending on the alternative, are identified in Table 9–2. There are a number of Federal environmental statutes that address environmental protection, compliance or consultation. In addition, certain environmental requirements have been delegated to state authorities for enforcement and implementation. It is Tucson Electric Power Company’s (TEP) policy to conduct its operations in an environmentally safe manner and in compliance with all applicable statutes, regulations, and standards. Although this chapter does not address pending legislation or future regulations, TEP recognizes that the regulatory environment is in transition, and subject to many changes, and that the construction and operation of the proposed project must be conducted in compliance with all applicable regulations and standards.

Table 9–1. List of Potentially Required Permits/Approvals

Agency	Permit/Approval
ACC	Certificate of Environmental Compatibility
EPA	Aquifer Protection Permit
ADEQ	Hazardous Waste Permit
	Stormwater Permits
Arizona Department of State Lands	Right-of-way grant ¹
BLM	Right-of-way Grant and fiber optic line permit
ADA	Native Plant Permit
ADOT	Encroachment Permit
	Crossing Permit
	Boring Permit
	Class C Permit
DOE	Presidential Permit
Pima County Department of Environmental Quality	Activity Permit
Pima and Santa Cruz Counties	Zoning Approval
	Industrial Use Permit
	Excavation/Grading Permit
	Septic Permit
	Permit for Temporary Construction Facilities
	Permit for Temporary Power
	Building Permits
	Permit to Build in Roadway
USFWS	ESA Concurrence in a Biological Opinion
SHPO	NHPA Concurrence in a Programmatic Agreement (and Advisory Council if necessary with clearance stipulations)

¹ Only the Federal government may exercise its power of eminent domain and condemn State Trust lands. TEP does not have condemnation power on State Trust lands. It should also be noted that the Arizona Corporation Commission has no authority to require the Arizona State Land Department to issue a right of way across State Trust lands.

Table 9–1. List of Potentially Required Permits/Approvals (*continued*)

Agency	Permit/Approval
USACE USFS	<i>Clean Water Act</i> Permits, Section 404 Cultural Resources Inventory Permit Special Use Authorization
USIBWC	Cultural Resource Inventory Clearance Approval Review and concur on construction plans upon issuance of ROD by the lead agency

ACC = Arizona Corporation Commission; ADA = Arizona Department of Agriculture; ADEQ = Arizona Department of Environmental Quality; ADOT = Arizona Department of Transportation; BLM = Bureau of Land Management; DOE = U.S. Department of Energy; EPA = U.S. Environmental Protection Agency; ESA = *Endangered Species Act*; NHPA = *National Historic Preservation Act*; SHPO = State Historic Preservation Officer; USACE = U.S. Army Corps of Engineers; USFS = U.S. Department of Agriculture Forest Service; USFWS = U.S. Fish and Wildlife Service; USIBWC = U.S. Section of the International Boundary and Water Commission, U.S. and Mexico.

Table 9–2. Federal Environmental Statutes, Regulations, and Orders

Resource Category	Statute/Regulation/Order	Citation	Administering Agency	Permits, Approvals, Consultations, and Notifications
Air Resources	CAA	42 USC §§ 7401 et seq.	EPA	Requires sources to meet standards and obtain permits to satisfy: National Ambient Air Quality Standards (NAAQS), State Implementation Plans (SIPs), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and New Source Review (NSR). Applicability: No major source permit required under NESHAP or NSR. No NSPS requirements. SIP requirements may apply.
	CAA: NAAQS SIP	42 USC §§ 7409 et seq.	EPA	Requires compliance with primary and secondary ambient air quality standards governing sulfur dioxide, nitrogen oxide, carbon monoxide, ozone, lead, and particulate matter and emission limits/reduction measures as designated in each state's implementation plan. Applicability: SIP requirements may apply.
Noise	<i>Noise Control Act</i>	42 USC §§ 4901 et seq.	EPA	Requires facilities to maintain noise levels that do not jeopardize the health and safety of the public. Applicability: Applicable.
Water Resources	CWA	33 USC §§ 1251 et seq.	ADEQ	Requires EPA or state-issued permit(s) National Pollutant Discharge Elimination System (NPDES) and compliance with provisions of permits regarding discharge of effluents to surface waters and additional wetland protection requirements. Applicability: No NPDES permit required. Other requirements may apply.
	CWA	Section 404	USACE	Requires permit for discharge of dredge or fill material in waters of the U.S. and water quality certification. Applicability: Potentially applicable.
	<i>Safe Drinking Water Act</i>	42 USC §§ 300f et seq.	EPA/State of Arizona Department of Water Quality	Requires permits for construction/operation of underground injection wells and subsequent discharging of effluents to ground aquifers. Applicability: Sole-source Aquifer Protection Program Applicable.
	EO 11988: Floodplain Management EO 11990: Protection of Wetlands Management	42 FR 26951 May 24, 1977 42 FR 26961 May 24, 1977 10 CFR 1022 (implementing regulations)	Federal agencies	Where there is no practical alternative to development in floodplains and wetlands, Federal agencies are required to prepare a floodplains and wetlands assessment, design mitigation measures, and provide public review. For floodplain involvement, Federal agencies must issue a Floodplain Statement of Findings. Applicability: Applicable.

Table 9–2. Federal Environmental Statutes, Regulations, and Orders (continued)

Resource Category	Statute/Regulation/Order	Citation	Administering Agency	Permits, Approvals, Consultations, and Notifications
Soil Resources	<i>Farmland Protection Policy Act</i>	7 USC §§ 4201 et seq.	NRCS	Minimizes any adverse effects to prime and unique farmlands. Applicability: Applicable.
Biological Resources	<i>Bald and Golden Eagle Protection Act</i>	16 USC §§ 668 et seq.	USFWS	Consultations should be conducted to determine if any protected birds are found to inhabit the area. If so, TEP must obtain a permit prior to moving any nests due to construction or operation of project facilities. Applicability: Applicable.
	EO 13112: Invasive Species	64 FR 6183 February 8, 1999	Federal agencies	Requires agencies, to the extent practicable and permitted by law, to prevent the introduction of invasive species; to provide for their control; and to minimize the economic, ecological, and human health impacts that invasive species cause. Applicability: Applicable.
	MBTA	16 USC §§ 703 et seq.	USFWS	Requires consultation to determine if there are any impacts on migrating bird populations due to construction or operation of project facilities. If so, TEP will develop mitigation measures to avoid adverse effects. Applicability: Applicable.
	ESA/Section 7	16 USC §§ 1531 et seq.	USFWS	Requires consultation to identify endangered or threatened species and their habitats, assess impacts thereon, obtain necessary biological opinions, and, if necessary, develop mitigation measures to reduce or eliminate adverse effects of construction or operations. Applicability: Applicable.
Cultural Resources	NHPA/Sections 106 and 110	16 USC §§ 470 et seq.	DOE/Forest Supervisor of Coronado National Forest/BLM	Requires consultation with the SHPO, land management agencies, and in certain cases the Advisory Council on Historic Preservation prior to construction to ensure that no significant (that is, National Register-eligible properties, as defined in NHPA) historical properties would be affected. Applicability: Applicable.
	<i>Archaeological and Historical Preservation Act</i>	16 USC §§ 469 et seq.	DOI	Requires DOE to obtain permits for any disturbances of archaeological resources. Applicability: Applicable.
	<i>Antiquities Act</i>	16 USC §§ 431-433	DOI	Requires DOE to comply with all applicable sections of the Act. Applicability: Applicable.
	<i>American Indian Religious Freedom Act</i>	42 USC §§ 1996	DOI	Requires DOE to consult with local Native American Indian tribes prior to construction to ensure that their religious customs, traditions, and freedoms are preserved. Applicability: Applicable.

Table 9–2. Federal Environmental Statutes, Regulations, and Orders (continued)

Resource Category	Statute/Regulation/Order	Citation	Administering Agency	Permits, Approvals, Consultations, and Notifications
Cultural Resources (continued)	EO 13007: Protection and Accommodation of Access to “Indian Sacred Sites”	61 FR 26771 May 29, 1996	DOI	Requires DOE to consider the potential impact of its actions on Native American sacred sites, access to sacred sites, or use of sacred sites. Applicability: Applicable.
	EO 13175: Consultation and Coordination With Indian Tribal Governments	63 FR 67249 November 9, 2000	DOI	Requires DOE to consult on a government-to-government basis with tribes and Nations Applicability: Applicable.
Worker Safety and Health	<i>Occupational Safety and Health Act</i>	5 USC §§ 5108	OSHA	Requires Agencies to comply with all applicable work safety and health legislation (including guidelines of 29 CFR 1960) and prepare, or have available, Material Safety Data Sheets. Applicability: Applicable.
	Hazard Communication Standard	29 CFR 1910.1200	OSHA	Requires DOE to ensure that workers are informed of, and trained to handle all chemical hazards in the DOE workplace. Applicability: Applicable.
Visual Resources	<i>Wild and Scenic Rivers Act</i>	16 USC §§ 1271-1287	USDA and DOI	Provides for designation and administration of wild, scenic, or recreational rivers. Applicability: Eligible river in project area.
	<i>Wilderness Act</i>	16 USC 1131-1136	DOI and USDA	Establishes determination of suitability and establishment of restrictions on activities that can be undertaken in an area designated as wilderness area, including preservation of wilderness character and natural condition. Applicability: Applicable.
	<i>National Trails System Act</i>	16 USC §§ 1241-1249	DOI and USDA	Authorizes a national system of trails to provide additional outdoor recreation opportunities and to promote the preservation of access to the outdoor areas and historic resources of the nation. Applicability: Applicable.
	<i>Environmental Quality Improvement Act</i>	42 USC §§ 4371-4375	CEQ	Requires each Federal agency conducting or supporting public works activities affecting the environment to implement policies established under existing law, to provide for enhancement of environmental quality. Applicability: Applicable.

Table 9–2. Federal Environmental Statutes, Regulations, and Orders (*continued*)

Resource Category	Statute/Regulation/Order	Citation	Administering Agency	Permits, Approvals, Consultations, and Notifications
	<i>Public Rangelands Improvement Act</i>	43 USC §§ 1901-1908	DOI and USDA	Establishes a national policy and commitment to improve the conditions on public rangelands, requires a national inventory and consistent federal management policies, and provides funds for range improvement projects, enhancing recreational and aesthetic purposes. Applicability: Applicable.
Other	NEPA	42 USC §§ 4321 et seq. 40 CFR 1500-1508	CEQ	40 CFR 1500-1508 directs all Federal agencies in the implementation of NEPA. DOE NEPA regulations are in 10 CFR Part 1021, USFS NEPA regulations are at <u>36 CFR 215</u> , and BLM NEPA regulations are in BLM Manual and Handbook 1790-1 and DOI guidance (516 DM 1-7). Applicability: Applicable.
	<i>Toxic Substances Control Act</i>	42 USC §§ 2011	EPA	Requires TEP to comply with inventory reporting requirements and chemical control provisions of TSCA to protect the public from the risks of exposure to chemicals. TSCA imposes strict limitations on use and disposal of polychlorinated biphenyl-contaminated equipment. Applicability: Applicable.
	<i>Hazardous Materials Transportation Act</i>	49 USC §§ 1801 et seq.	DOT	Requires TEP to comply with the requirements governing hazardous materials and waste transportation. Applicability: Applicable.
	<i>Emergency Planning and Community Right-To-Know Act</i>	42 USC §§ 11001 et seq.	EPA	Requires the development of emergency response plans and reporting requirements for chemical spills and other emergency releases, and imposes right-to-know reporting requirements covering storage and use of chemicals which are reported in toxic chemical release forms. Applicability: Applicable.
	<i>Pollution Prevention Act</i>	42 USC §§ 11001-11050	EPA	Establishes a national policy that pollution should be reduced at the source and requires a toxic chemical source reduction and recycling report for an owner or operator of facility required to file an annual toxic chemical release form under Section 313 of the <i>Superfund Amendments and Reauthorization Act</i> . Applicability: Potentially applicable.

Table 9–2. Federal Environmental Statutes, Regulations, and Orders (continued)

Resource Category	Statute/Regulation/Order	Citation	Administering Agency	Permits, Approvals, Consultations, and Notifications
Other (continued)	National Forest Management Act	16 USC §§ 1600-1614	USFS	Directs USFS to use an interdisciplinary approach in the planning process. Governs the Forest Plan amendment process for those corridors that would require an amendment for implementation. Applicability: Applicable.
	Proposed Construction and/or Alteration of Objects that May Affect the Navigation Space	FAA Advisory Circular (AC) No. 70/460-2H	FAA	This circular informs each proponent of a project that could pose an aviation hazard of the need to file the “Notice of Proposed Construction or Alteration” (Form 7640) with the FAA. Applicability: Potentially applicable.
	Obstruction Marking and Lighting	FAA AC No. 70/460-1G	FAA	This circular describes the FAA standards for marking and lighting objects that may pose a navigation hazard as established using the criteria in Title 14, Part 77 of the CFR. Applicability: Potentially applicable.
	Radio Frequency Device, Kits	47 CFR 15.25	FCC	Provisions of these regulations prohibit operation of any devices producing force fields, which interfere with radio communications, even if (as with transmission lines) such devices are not intentionally designed to produce radio-frequency energy. The FCC requires each line operator to mitigate all complaints about interference on a case-specific basis. Staff usually recommends specific conditions of certification to ensure compliance with this FCC requirement. Applicability: Applicable.
	EO 12088: Federal Compliance with Pollution Control Standards	43 FR 47707 October 17, 1978	Office of Management and Budget	Requires Federal agencies to consult with EPA and state agencies regarding the best techniques and methods for the prevention, control, and abatement of environmental pollution. Applicability: Potentially applicable.

Table 9–2. Federal Environmental Statutes, Regulations, and Orders (*continued*)

Resource Category	Statute/Regulation/Order	Citation	Administering Agency	Permits, Approvals, Consultations, and Notifications
Other (<i>continued</i>)	EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	59 FR 7629 February 16, 1994	EPA	Requires Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Applicability: Applicable.

AC = Advisory Circular; ADEQ = Arizona Department of Environmental Quality; BLM = Bureau of Land Management; CAA = *Clean Air Act*; CEQ = Council on Environmental Quality; CFR = Code of Federal Regulations; CWA = *Clean Water Act*; DOE = U.S. Department of Energy; DOI = Department of Interior; DOT = Department of Transportation; EO = Executive Order; EPA = U. S. Environmental Protection Agency; ESA = *Endangered Species Act*; FAA = Federal Aviation Administration; FCC = Federal Communications Commission; FR = *Federal Register*; MBTA = *Migratory Bird Treaty Act*; NAAQS = National Ambient Air Quality Standards; NEPA = *National Environmental Policy Act*; NHPA = *National Historic Preservation Act*; NPDES = National Pollutant Discharge Elimination System; NRCS = Natural Resources Conservation Service; OSHA = Occupational Safety and Health Administration; SHPO = State Historic Preservation Officer; SIP = state implementation plan; TEP = Tucson Electric Power Company; TSCA = *Toxic Substances Control Act*; USACE = U.S. Army Corps of Engineers; USC = United States Code; USDA = U.S. Department of Agriculture; USFS = U.S. Department of Agriculture Forest Service; USFWS = U.S. Fish and Wildlife Service.